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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Cynthia Ann De Camp,)	CIV 15-2235-PHX-MHB
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
Carolyn W. Colvin, Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	

Pending before the Court is Plaintiff Cynthia Ann De Camp's appeal from the Social Security Administration's final decision to deny her claim for supplemental security income. After reviewing the administrative record and the arguments of the parties, the Court now issues the following ruling.

I. PROCEDURAL HISTORY

In March 2012, Plaintiff filed an application for supplemental security income alleging disability beginning February 17, 2012. (Transcript of Administrative Record ("Tr.") at 11, 192-97.) Her application was denied initially and on reconsideration. (Tr. at 11, 84-118.) Thereafter, Plaintiff requested a hearing before an administrative law judge. (Tr. at 11, 130.) A hearing was held on April 29, 2014, (Tr. at 11, 32-69), and the ALJ issued a decision finding that Plaintiff was not disabled (Tr. at 8-31). The Appeals Council denied Plaintiff's request for review (Tr. at 1-7), making the ALJ's decision the final decision of the Commissioner. Plaintiff then sought judicial review of the ALJ's decision pursuant to 42 U.S.C. § 405(g).

II. STANDARD OF REVIEW

The Court must affirm the ALJ's findings if the findings are supported by substantial evidence and are free from reversible legal error. See Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998); Marcia v. Sullivan, 900 F.2d 172, 174 (9th Cir. 1990). Substantial evidence means "more than a mere scintilla" and "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971); see Reddick, 157 F.3d at 720.

In determining whether substantial evidence supports a decision, the Court considers the administrative record as a whole, weighing both the evidence that supports and the evidence that detracts from the ALJ's conclusion. See Reddick, 157 F.3d at 720. "The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and for resolving ambiguities." Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995); see Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989). "If the evidence can reasonably support either affirming or reversing the [Commissioner's] conclusion, the court may not substitute its judgment for that of the [Commissioner]." Reddick, 157 F.3d at 720-21.

III. THE ALJ'S FINDINGS

In order to be eligible for disability or social security benefits, a claimant must demonstrate an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). An ALJ determines a claimant's eligibility for benefits by following a five-step sequential evaluation:

- (1) determine whether the applicant is engaged in "substantial gainful activity";
- (2) determine whether the applicant has a medically severe impairment or combination of impairments;
- (3) determine whether the applicant's impairment equals one of a number of listed impairments that the Commissioner acknowledges as so severe as to preclude the applicant from engaging in substantial gainful activity;

1 (4) if the applicant's impairment does not equal one of the listed impairments,
2 determine whether the applicant is capable of performing his or her past relevant
work;

3 (5) if the applicant is not capable of performing his or her past relevant work,
4 determine whether the applicant is able to perform other work in the national
economy in view of his age, education, and work experience.

5 See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987) (citing 20 C.F.R. §§ 404.1520,
6 416.920). At the fifth stage, the burden of proof shifts to the Commissioner to show that the
7 claimant can perform other substantial gainful work. See Penny v. Sullivan, 2 F.3d 953, 956
8 (9th Cir. 1993).

9 At step one, the ALJ determined that Plaintiff had not engaged in substantial gainful
10 activity since March 20, 2012 – the application date. (Tr. at 13.) At step two, he found that
11 Plaintiff had the following severe impairments: mood and anxiety disorders. (Tr. at 13-14.)
12 At step three, the ALJ stated that Plaintiff did not have an impairment or combination of
13 impairments that met or medically equaled an impairment listed in 20 C.F.R. Part 404,
14 Subpart P, Appendix 1 of the Commissioner's regulations. (Tr. at 14-15.) After consideration
15 of the entire record, the ALJ found that Plaintiff retained the residual functional capacity "to
16 perform a full range of work at all exertional levels but with the following nonexertional
17 limitations: The claimant is limited to performing positions involving only simple routine,
18 repetitive tasks. In addition, she is unable to perform such tasks in a fast-paced environment.
19 Additionally, she is limited to only occasional interactions with supervisors and coworkers,
20 and further limited to brief, intermittent and superficial public contact. She can attend and
21 concentrate in two hour blocks of time throughout an eight-hour work day, with the two
22 customary ten to fifteen minute breaks, and a thirty to sixty minute lunch period."¹ (Tr. at 15-
23 24.) The ALJ found that Plaintiff has no past relevant work, but, considering her age,
24 education, work experience, and residual functional capacity, there are jobs that exist in
25 significant numbers in the national economy that Plaintiff could perform. (Tr. at 24-25.)

26
27 ¹ "Residual functional capacity" (or "RFC") is defined as the most a claimant can do
28 after considering the effects of physical and/or mental limitations that affect the ability to
perform work-related tasks.

Thus, the ALJ concluded that Plaintiff has not been under a disability since March 20, 2012 – the date the application was filed. (Tr. at 25.)

IV. DISCUSSION

In her brief, Plaintiff contends that the ALJ erred by failing to properly weigh medical source opinion evidence. Specifically, Plaintiff argues that the ALJ failed to give appropriate weight to the opinions of examining psychologists Sean Samuels, Psy.D., and Kari Coelho, Psy.D. Plaintiff also contends that the ALJ failed to give appropriate weight to the SMI (Seriously Mentally Ill) Determination completed by Darwyn Chern, M.D.

“The ALJ is responsible for resolving conflicts in the medical record.” Carmickle v. Comm’r, Soc. Sec. Admin., 533 F.3d at 1164. Such conflicts may arise between a treating physician’s medical opinion and other evidence in the claimant’s record. In weighing medical source opinions in Social Security cases, the Ninth Circuit distinguishes among three types of physicians: (1) treating physicians, who actually treat the claimant; (2) examining physicians, who examine but do not treat the claimant; and (3) non-examining physicians, who neither treat nor examine the claimant. See Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). The Ninth Circuit has held that a treating physician’s opinion is entitled to “substantial weight.” Bray v. Comm’r, Soc. Sec. Admin., 554 F.3d 1219, 1228 (9th Cir. 2009) (quoting Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir. 1988)). A treating physician’s opinion is given controlling weight when it is “well-supported by medically accepted clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the claimant’s] case record.” 20 C.F.R. § 404.1527(d)(2). On the other hand, if a treating physician’s opinion “is not well-supported” or “is inconsistent with other substantial evidence in the record,” then it should not be given controlling weight. Orn v. Astrue, 495 F.3d 624, 631 (9th Cir. 2007).

If a treating physician’s opinion is not contradicted by the opinion of another physician, then the ALJ may discount the treating physician’s opinion only for “clear and convincing” reasons. See Carmickle, 533 F.3d at 1164 (quoting Lester, 81 F.3d at 830). If a treating physician’s opinion is contradicted by another physician’s opinion, then the ALJ

1 may reject the treating physician's opinion if there are "specific and legitimate reasons that
2 are supported by substantial evidence in the record." Id. (quoting Lester, 81 F.3d at 830).

3 Since Drs. Samuels and Coelho were contradicted by other objective medical evidence
4 of record, the specific and legitimate standard applies.

5 Historically, the courts have recognized the following as specific, legitimate reasons
6 for disregarding a treating or examining physician's opinion: conflicting medical evidence;
7 the absence of regular medical treatment during the alleged period of disability; the lack of
8 medical support for doctors' reports based substantially on a claimant's subjective complaints
9 of pain; and medical opinions that are brief, conclusory, and inadequately supported by
10 medical evidence. See, e.g., Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005); Flaten
11 v. Secretary of Health and Human Servs., 44 F.3d 1453, 1463-64 (9th Cir. 1995); Fair v.
12 Bowen, 885 F.2d 597, 604 (9th Cir. 1989).

13 In his consideration of the objective medical evidence, the ALJ first explained that
14 beginning in May of 2009 through June of 2013, Plaintiff was examined and evaluated by
15 a number of psychologists. The ALJ found that during these examinations, Plaintiff reported
16 having no difficulty managing personal finances and stated that she is able to prepare meals,
17 do light housework, take care of her own laundry, and check email. The ALJ noted that one
18 of the examiners, Albert Fink, Ph.D., found no evidence of psychotic symptoms; a dysphoric
19 mood, which does not appear to be an impediment to functioning; and that she is anxious,
20 which does not appear as an impediment to her ability to function as well. This same
21 examiner assessed Plaintiff with a GAF score of 70, generally indicating some mild
22 symptoms or some difficulty in social, occupational, or school functioning, but generally
23 functioning pretty well and having some meaningful relationships.

24 Next, the ALJ addressed the findings of Dr. Coelho, who noted that Plaintiff appeared
25 to have good ability to understand and remember simple instructions. Dr. Coelho stated that
26 there were no symptoms that would suggest she would struggle to remember detailed
27 instructions and work like procedures. However, Dr. Coelho also found that it was
28 questionable whether Plaintiff would be able to maintain regular attendance at a job, as she

1 has never been consistently employed. Dr. Coelho indicated that Plaintiff prefers to isolate,
2 demonstrates poor impulse control, has low frustration tolerance, and exhibits poor decision
3 making to the extent it could interfere with her ability to respond appropriately to changes
4 in a work setting and take appropriate actions. However, the ALJ also noted that Dr. Coelho
5 opined that Plaintiff was able to sufficiently communicate and maintain eye contact, as well
6 as, maintain basic standards of neatness. Dr. Coelho concluded that the Plaintiff's prognosis
7 is fair, although she should continue to participate in more consistent outpatient mental health
8 treatment and she would probably also benefit from individual therapy to address her mood
9 instability, her interpersonal difficulties, and various losses that she has sustained over her
10 life.

11 In his evaluation of Dr. Samuels' findings, the ALJ first noted that Dr. Samuels found
12 Plaintiff's insight was within normal limits; her immediate memory appeared intact; and she
13 demonstrated that she would be able to learn, remember and comprehend simple instructions.
14 However, Dr. Samuels also opined that given her lack of employment history it was difficult
15 to identify the type of setting Plaintiff would be able to manage, and there was some question
16 regarding her ability to attend to, concentrate on, and complete simple tasks, which would
17 be marginalized by the intensity and frequency of psychological symptoms. Dr. Samuels
18 additionally determined that when Plaintiff was required to operate outside her day-to-day
19 routine, she appeared to experience a significant increase in symptoms of anxiety, and
20 concluded that with her level of functioning it was difficult to believe Plaintiff could operate
21 in an unskilled work setting.

22 Regarding the state agency physicians, specifically, Eric Penner, Ph.D., the ALJ
23 stated, "[b]ased on the evidence, the undersigned concludes the State agency adequately
24 considered the evidence of record and great weight is given to the opinions because they are
25 consistent with the record as a whole. More specifically, the State agency physicians'
26 assessments are consistent with the treatment notes generally and consistently indicating the
27 claimant oriented to person, place and time, with normal psychomotor, gait, posture, as well
28 as unremarkable thought content, logical and sequential thought process, intact memory,

1 average and above average intellectual functioning, fair insight and judgment, although with
2 questionable and limited attention or concentration at times.”

3 The ALJ gave Dr. Samuels’ opinion “lesser weight” than the other examiners noting
4 that Dr. Samuels’ assessment of Plaintiff’s functioning were primarily based on Plaintiff’s
5 subjective reports, as well as, Plaintiff’s daughter’s reports. The ALJ also found that Dr.
6 Samuels’ assessment was inconsistent with the assessments of Drs. Fink, Penner, and
7 portions of Dr. Coelho’s opinion. The ALJ determined that the other doctors’ assessments
8 are consistent with the treatment notes, indicating that Plaintiff is oriented to person, place
9 and time, with normal psychomotor, gait, posture, as well as, unremarkable thought content,
10 logical and sequential thought process, intact memory, average and above average
11 intellectual functioning, fair insight and judgment, although questionable and limited
12 attention or concentration. The ALJ continued stating that the other examiners’ findings were
13 consistent stating that Plaintiff did well on her MSEs, exhibits normal and logical thought
14 processes, clear speech, intact memory, no evidence of psychotic symptoms, and a good
15 ability to understand and remember simple instructions. The ALJ found that although the
16 treatment notes indicate that Plaintiff has had episodes of depression with suicidal ideations
17 and plans, those episodes concur with her lack of compliance and alcohol abuse.

18 The Court finds that the ALJ set out a detailed and thorough summary of the facts and
19 conflicting evidence, properly weighed the medical source opinion evidence related to
20 Plaintiff’s alleged impairments, and gave specific and legitimate reasons, based on
21 substantial evidence in the record to support his findings. The ALJ properly discredited the
22 opinions of Dr. Samuels and Dr. Coelho (to the extent said opinion is contradictory to the
23 record as a whole) due to inconsistencies with Plaintiff’s medical evidence as a whole. The
24 ALJ also reasoned that Dr. Samuels’ opinion was primarily based on self-reports. See, e.g.,
25 Morgan v. Comm’r Soc. Sec. Admin., 169 F.3d 595, 602 (9th Cir. 1999) (citing Fair, 885 F.2d
26 at 605) (An ALJ may reject a treating physician’s opinion if it is based “to a large extent” on
27 a claimant’s self-reports that have been properly discounted as incredible.); Tommasetti v.
28 Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008) (incongruity between treating doctor’s

questionnaire responses and her medical records provided a specific and legitimate reason for rejecting the doctor's opinion of claimant's limitations); Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir. 2003) ("We hold that the ALJ properly found that [the physician's] extensive conclusions regarding [the claimant's] limitations are not supported by his own treatment notes. Nowhere do his notes indicate reasons why [the physician would limit the claimant to a particular level of exertion]."); Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (holding that the ALJ properly rejected a physician's testimony because "it was unsupported by rationale or treatment notes, and offered no objective medical findings to support the existence of [the claimant's] alleged conditions"); Batson v. Comm'r of Soc. Sec., 359 F.3d 1190, 1195 (9th Cir. 2004) (ALJ may discredit treating physicians' opinions that are conclusory, brief, and unsupported by the record as a whole, or by objective medical findings); Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012) ("We have held that the ALJ may permissibly reject check-off reports that do not contain any explanation of the bases of their conclusions.").

Therefore, the Court finds no error.

As to Plaintiff's assertion that the ALJ failed to give appropriate weight to the SMI (Seriously Mentally Ill) Determination completed by Darwyn Chern, M.D., the Court again is not persuaded.

Disability determinations by other government agencies are not binding on the Commissioner. See 20 CFR § 404.1504; Social Security Ruling 06-03p. This rule applies even where the standards for obtaining disability benefits through another agency are more rigorous than the standards applied by the Social Security Administration. See Wilson v. Heckler, 761 F.2d 1383, 1386 (9th Cir. 1985). Therefore, while a state finding of disability can be introduced into evidence in a proceeding for Social Security disability benefits, an ALJ may attribute as much or as little weight to the finding as he or she deems appropriate. See 20 C.F.R. § 404.1504; Little v. Richardson, 471 F.2d 715, 716 (9th Cir. 1972) (state determination of disability was not binding in proceedings on application for Social Security disability benefits).

1 Here, the ALJ found that Plaintiff was determined to have a serious mental illness, and
2 stated that he has taken this into consideration in making his decision. However, the ALJ
3 explained, “a decision indicating that the claimant has a serious mental illness is not the
4 Social Security Administration’s decision about whether that individual is disabled. We must
5 make a disability determination based on social security law. Therefore, although the
6 undersigned has taken it into consideration, the determination that the claimant is eligible for
7 treatment due to a serious mental illness is not a decision that she is disabled and is not
8 binding on us. (20 CFR § 404.1504).”

9 The Court concurs that the evidence of record is consistent with Plaintiff’s assessed
10 RFC regardless of Plaintiff’s SMI designation completed by Dr. Chern. The Court finds that
11 the ALJ provided sufficient reasons supported by substantial evidence for rejecting the
12 assessment.

13 V. CONCLUSION

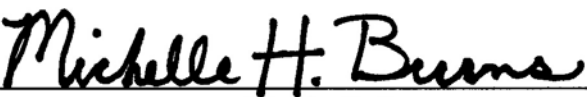
14 Substantial evidence supports the ALJ’s decision to deny Plaintiff’s claim for
15 supplemental security income in this case. Consequently, the ALJ’s decision is affirmed.

16 Based upon the foregoing discussion,

17 **IT IS ORDERED** that the decision of the ALJ and the Commissioner of Social
18 Security be affirmed;

19 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment
20 accordingly. The judgment will serve as the mandate of this Court.

21 DATED this 15th day of March, 2017.

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23 _____

24 Michelle H. Burns
25 United States Magistrate Judge
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